

*Region 5 IC Review
IC Roundtable
April 2006*

Jan Carlson
Office of Regional Counsel
Chicago, Illinois

Carlson.janet@epa.gov

“Sorry – We’ll have to delay NPL deletion of the Site.
I’m still bound by this restrictive covenant!”



Region 5 - Review of Proprietary Institutional Controls

Map

- Areas of contained waste
- Monitoring systems
- Limited use areas

Title Commitment Pilot

PRP Involvement



Goals - Title Work

- Integration of Restrictive Covenants into traditional property system
- “Constructive Notice” to the world
- Assure Legal Status of Environmental Covenant



State Recording Statutes

- All property records in one place
 - County Recorders Office
- Record Grantor and Grantee
- Priority of Interests
 - Typically determined by who records first



First Step - Obtain Best Available Information on Restricted Areas

- RODs
- Prior Five Year Reviews
- CDs, UAOs, AOCs
- Current Monitoring Information
- As Built Drawings
- Legal Description



Why Title Commitment?

- Replicate Title examination – private purchaser
- Title Company
 - Independent third party
 - Standard Format
 - Comprehensive & Reliable
 - Underwriting Guidelines
 - Tort Liability for faulty searches



Legal Description - What we read

- Beginning at the Northwest Corner of said Section 32;
- thence South 56 degrees East 371 feet to a point, thence South 24 degrees East 215 feet to a point, thence South 39 degrees 30 minutes West 280 feet to a point, thence South 59 degrees West 402 feet, thence North 40 degrees 15 minutes West for 279 feet, thence North 30 degrees East 220 feet, thence North 50 degrees East 265 feet, thence North 76 degrees 185 feet, Thence North 5 degrees 115, thence North 61 degrees 30 minutes East 195 feet.



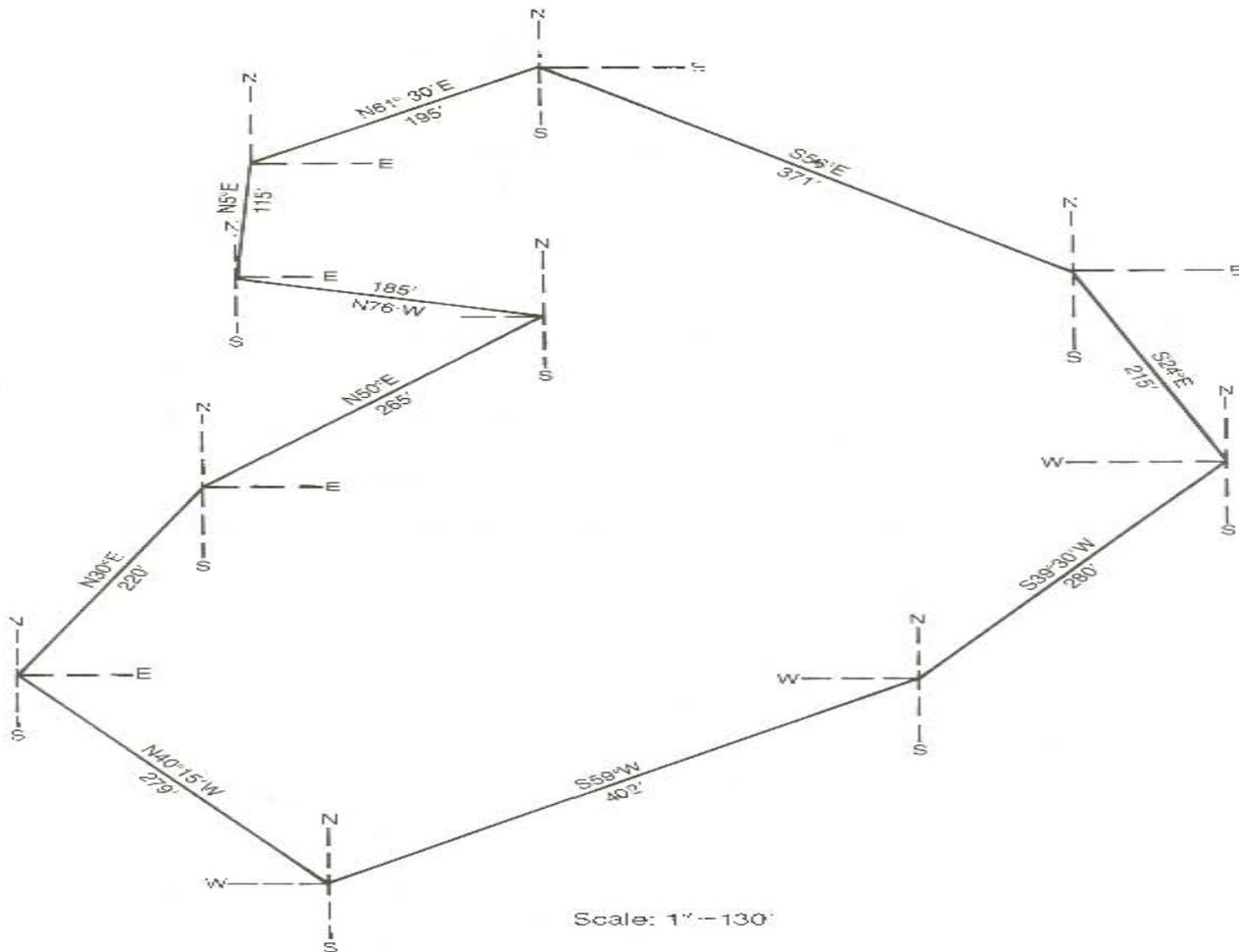
Legal Description – What we comprehend

- blah, blah, blah, blah, blah, blah, blah, blah, blah
- Blah, blah, blah, blah, blah, blah, blah, blah, blah
- Blah, blah, blah, blah, blah, blah, blah, blah, blah
- Blah, blah, blah, blah, blah, blah, blah, blah, blah
- blah, blah, blah, blah, blah, blah, blah, blah, blah
- Blah, blah, blah, blah, blah, blah, blah, blah, blah
- Blah, blah, blah, blah, blah, blah, blah, blah, blah

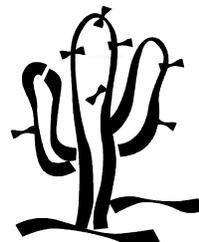


COURSES AND DISTANCES

Courses and distances are always based on true north and south (or a constant variation from that if one is given) and **not** on the preceding call (See Deflection Angles, p. 216). The degrees are 90° or less (i.e. S 58°E rather than N 146°E).

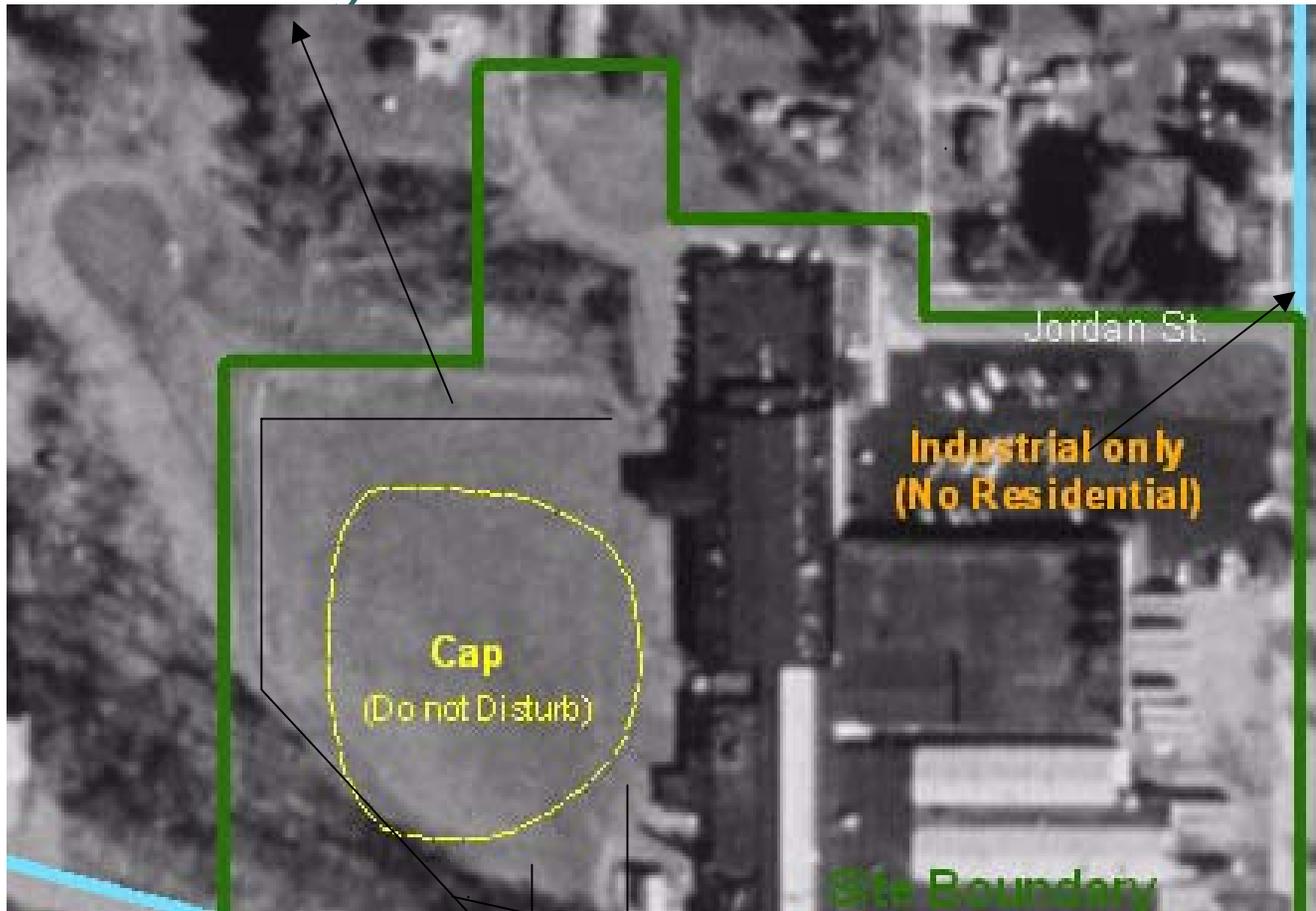


(A good double check and reference on how to hold and use your protractor. The E or W direction indicates the direction in which the rounded edge should be facing.)



actual boundary of landfill cap.

Survey Issues



Area shows where Soil has been cleaned up to levels that are protective of industrial use only. IC is needed in this area to prohibit Non industrial uses.

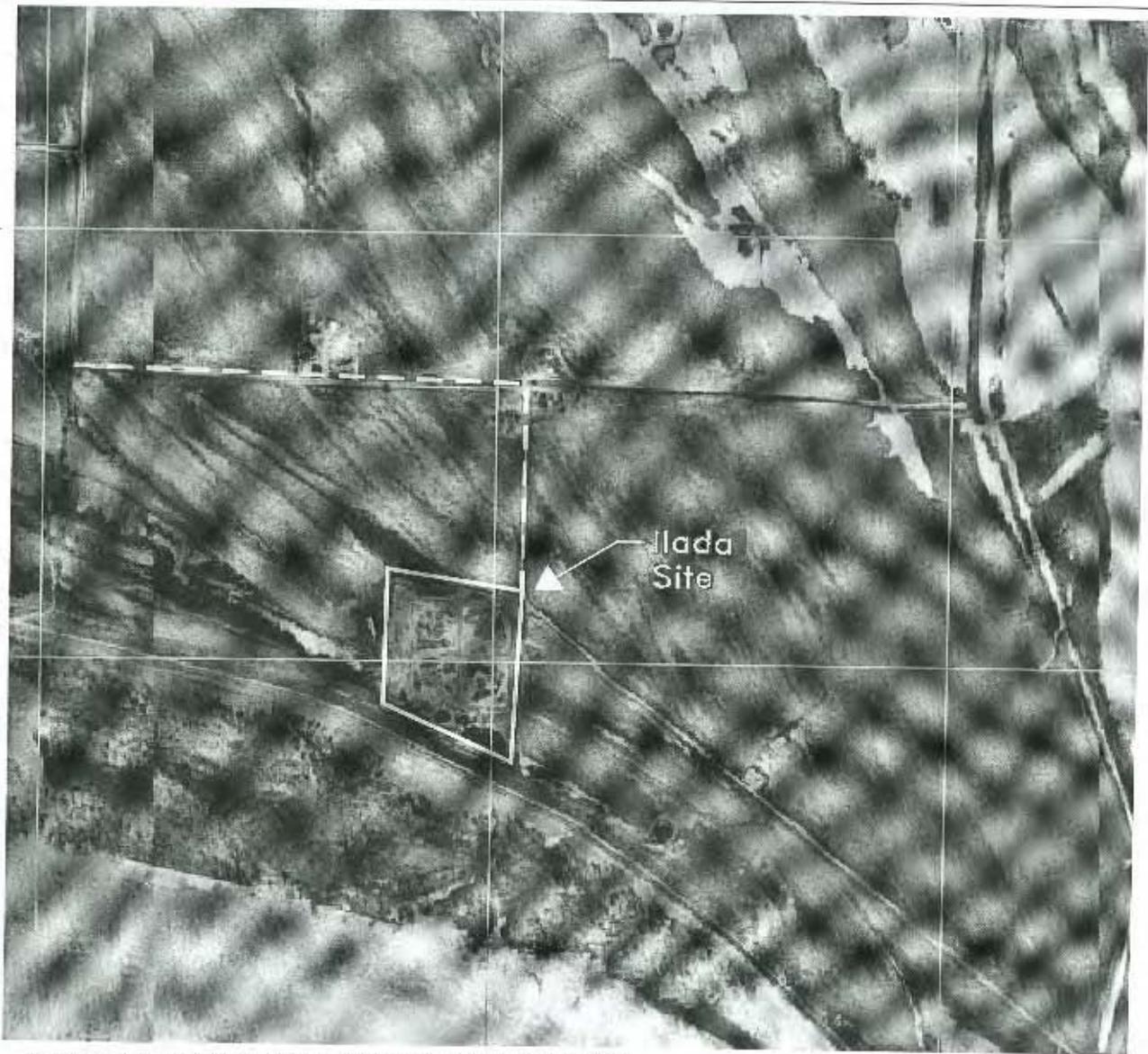
Area covered by ROD map.





LAT: 37° 15' 55" --

LAT: 37° 15' 30" --

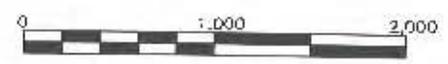


USGS 7 km SE of Cape Girardeau, Missouri, United States, 05 April 1998

LONG: 89°W 28' 17"

LONG: 89°W 27' 44"

LONG: 89°W 27' 12"



USGS McClure

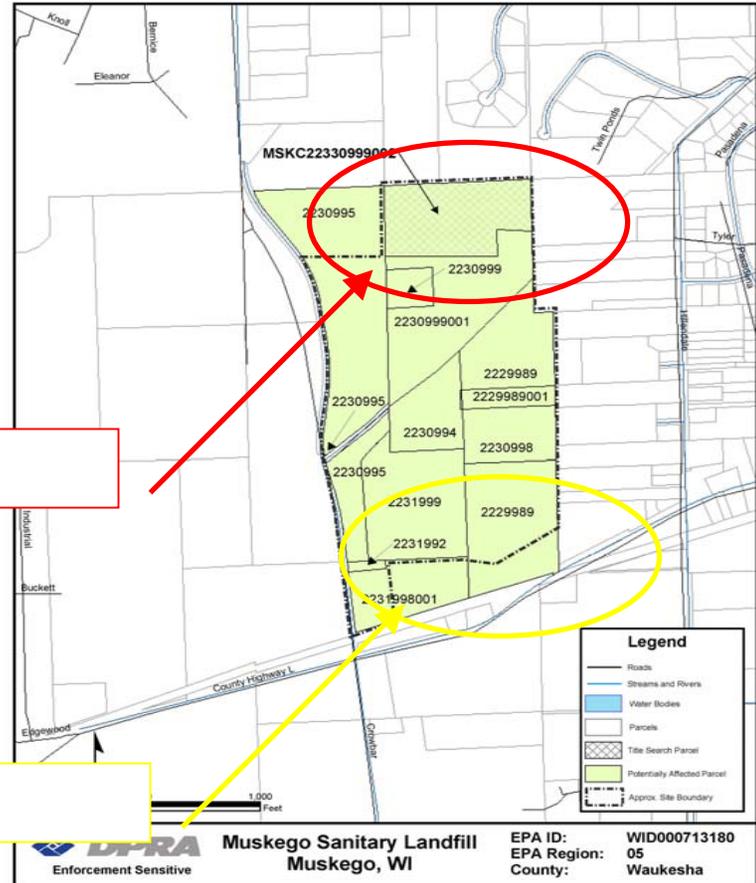


Overlay parcel map c

Landfill area

- Landfill property has restrictive covenant to prohibit interference with the cap and maintenance

Industrial Use Area



Region 5 Title Commitment Pilot

Goal – written request for bid – sought title firm for single point of contact



Region 5 - Title Commitment Pilot

- Sites in rural areas - Local Title/Abstract Companies
- Sites in Larger Towns – National Title Company
- \$700 - \$1000 per parcel
- Alternative title search – large sites or those located in rural areas



COMMITMENT FOR TITLE INSURANCE

SCHEDULE A

1. Effective Date: **October 6, 2005 at 08:00 AM**

2. Policy (or Policies) to be issued:	Amount
(a) Owner's Policy (ALTA Own. Policy (10/17/92))	\$ To Be Determined

Proposed Insured:

**GRB Environmental Services, Inc.
and/or their nominees**

(b) Loan Policy (ALTA Loan Policy (10/17/92))	\$ NONE
--	----------------

Proposed Insured:

NONE

3. Title to the Fee Simple estate or interest in the land described or referred to in this Commitment is at the Effective Date hereof vested in:

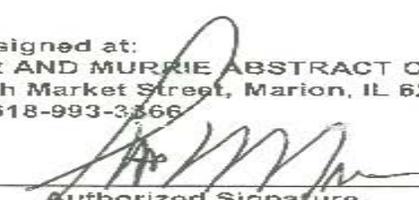
Alexander County as Trustee

4. The land referred to in this Commitment is described as follows:

SEE SCHEDULE C ATTACHED HERETO

~ END OF SCHEDULE A ~

Countersigned at:
PALMER AND MURRIE ABSTRACT CO., INC.
506 North Market Street, Marion, IL 62959
Phone: 618-993-3566



Authorized Signature
Curtis E. Palmer/Scott Murrie/Deborah L. Abbott

This Commitment is invalid unless
the Insuring Provisions and
Schedules A, B and C are attached.



Lawyers Title Insurance Corporation

Case Number: P-05-1460

SCHEDULE B - SECTION 2

EXCEPTIONS

11. We find no financing statements of record in the County of origin affecting real estate described under Schedule C herein. No examination of financing statements was made as to the Secretary of State of the State of Illinois.
12. Subject to Declaration of Covenants dated September 17, 1997, by Harriette H. McCrate, recorded December 15, 1997, in Book 307 Page 840, in the Recorder's Office of Alexander County, Illinois.
13. Easement for Roadway Purposes granted Texas Eastern Transmission Corporation, dated September 11, 1975, Recorded October 14, 1975, in Book 215, Pages 539 and 540, in the Recorder's Office of Alexander County, Illinois.
14. Easement granted East Cape Girardeau and Clear Creek Drainage District, by instrument dated January 7, 1953, recorded January 19, 1953, in Deed Record 160 Pages 145 thru 148, in the Recorder's Office of Alexander County, Illinois.
15. Subject to terms and provisions of Lease dated April 7, 1947, recorded April 24, 1947, in Deed Record 145, Pages 253 thru 256, in the Recorder's Office of Alexander County, Illinois.
16. Easement granted East Cape Girardeau and Clear Creek Drainage District, by instrument dated May 10, 1940, recorded November 6, 1940, in Deed Record 133, Pages 105 and 106, in the Recorder's Office of Alexander County, Illinois.
17. Subject to the interest of Joseph E. McCrate and David P. McCrate, and or their heirs, by virtue of Trustee's Deed dated October 9, 1975, Recorded November 17, 1975, in Deed Record 224 Pages 233 and 234, in the Recorder's Office of Alexander County, Illinois.
18. Subject to terms and provisions as set out in Deed Record 224 Pages 233 and 234, in the Recorder's Office of Alexander County, Illinois.
19. Subject to terms and provisions of Memorandum of Agreement for Warranty Deed by and between Joseph E. McCrate and David P. McCrate, sellers, to Kara Oil Company, buyer, dated October 26, 1979, recorded November 8, 1979, in Book 231 pages 127 and 128, in the Recorder's Office of Alexander County, Illinois. Assigned to Larry Edward Wilson, an individual, by instrument dated March 30, 1981, Recorded August 28, 1981, in Book 244, Pages 103 thru 106, in the Recorder's Office of Alexander

Palmer & Murrie Abstract Co., Inc.
PO Box 337
Marion, IL 62959

This Commitment is invalid unless
the insuring Provisions and
Schedules A, B and C are attached.



Title Commitment

- Current Ownership of Property
- Demonstrate proper recordation
- Identify incompatible property interests
 - notify entities – release or subrogate interests



Institutional Controls PRP Involvement



Authority for PRP IC Study – Consent Decree & UAO provisions

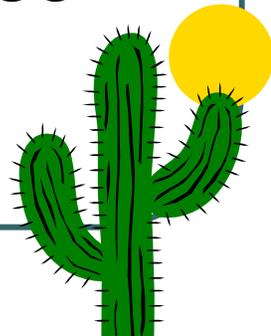
- “periodic review” – PRPs agree to perform studies to review protectiveness of the remedy
- additional or modification of work – to achieve and maintain performance standards; consistent with remedy
- site specific provisions



Authority for Title Commitment

Model RDRA Consent Decree requires a **current title insurance commitment** or other evidence of title acceptable to EPA,

Demonstrate **free and clear of all prior liens and encumbrances** (except when approved by EPA or ... Settling Defendants are unable to obtain release or **subordination of liens or encumbrances**)



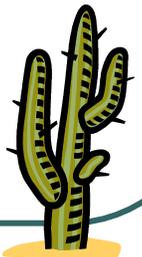
Authority - Talking Points

- Parties have agreed in CD that 5 year reviews are necessary and SDs have obligation to do studies for 5 year review
- SDs believe they can do activities more cost effectively
- EPA will do the IC evaluation - Oversight Bill



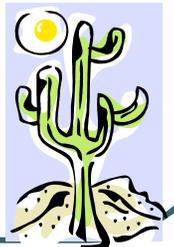
PRP request letters

- **Demonstrate that existing controls cover the entire area that needs to be restricted?**
 - **Most up to date information**
 - **Maps**
- **Demonstrate recordation and free of encumbrances – title commitment**
- **Demonstrate signed by owner – title work**



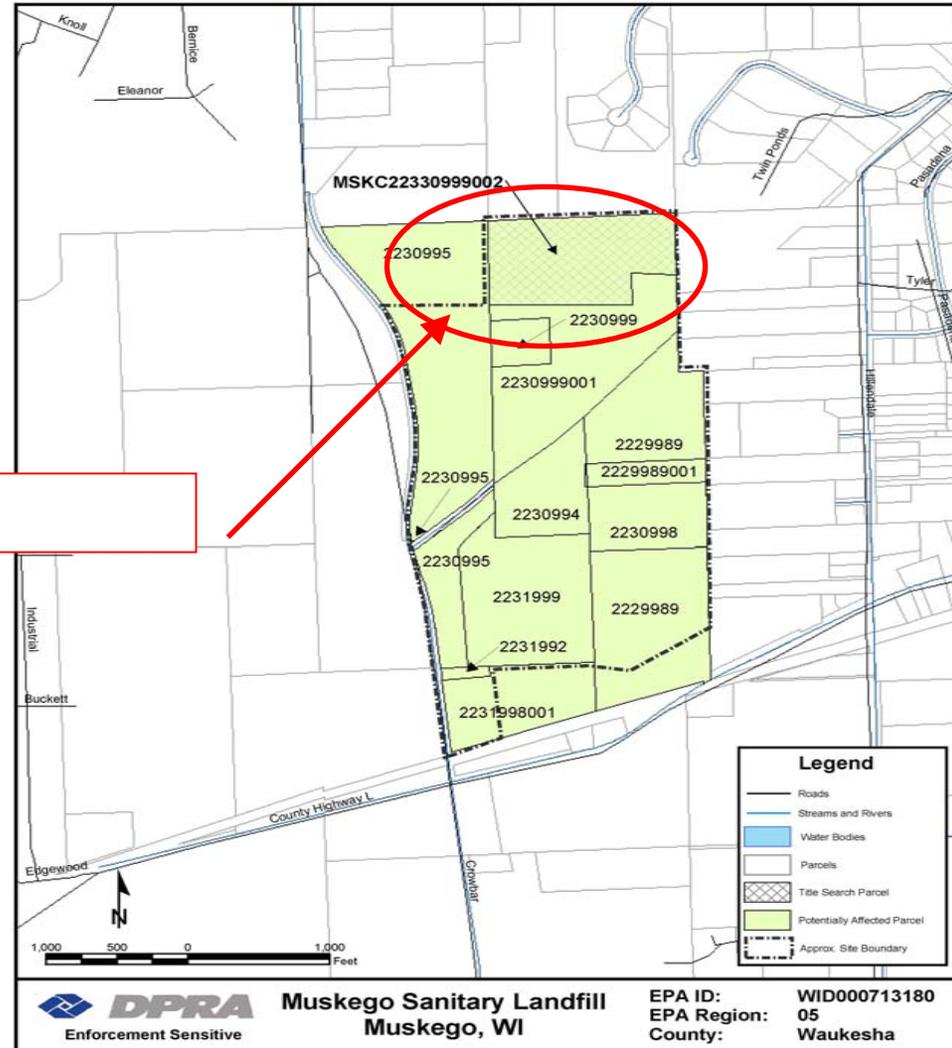
PRP Request Letters

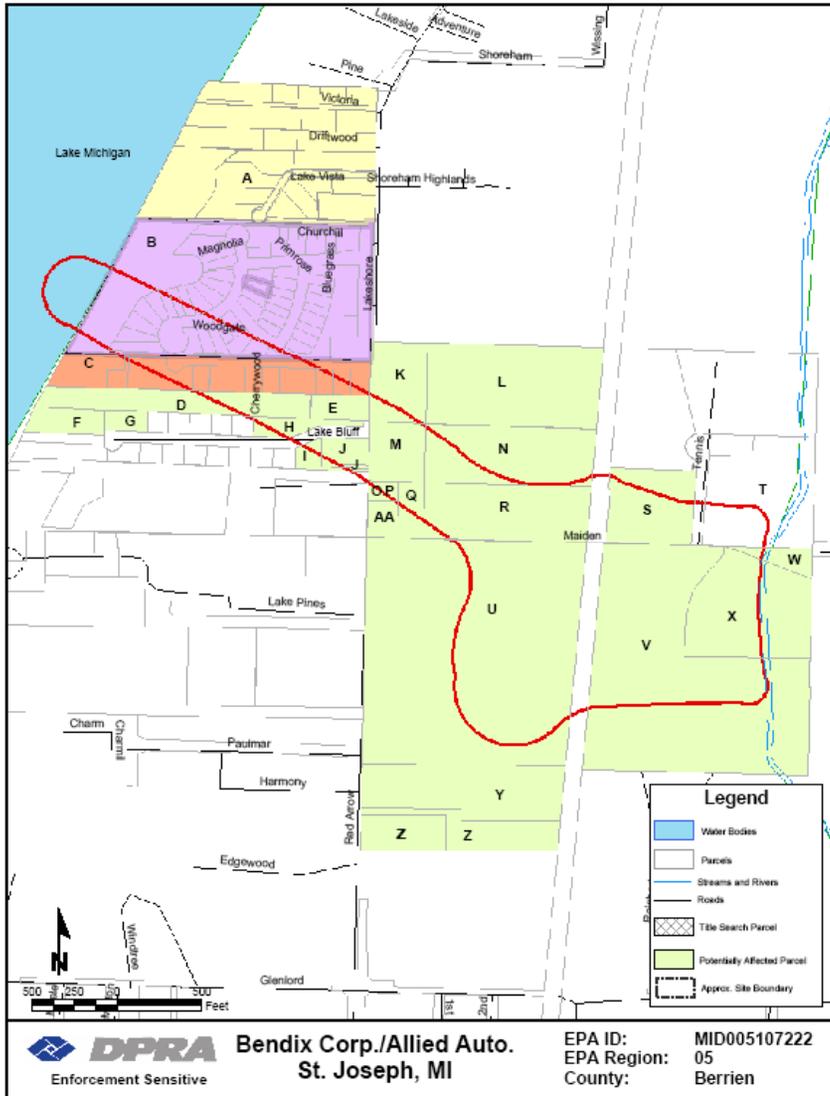
- Assess objectives
- Assess monitoring
- Discuss effectiveness
 - Short term/long term
 - Under state law
- Propose Follow up Actions



Identify Parcels of Areas that need restrictions

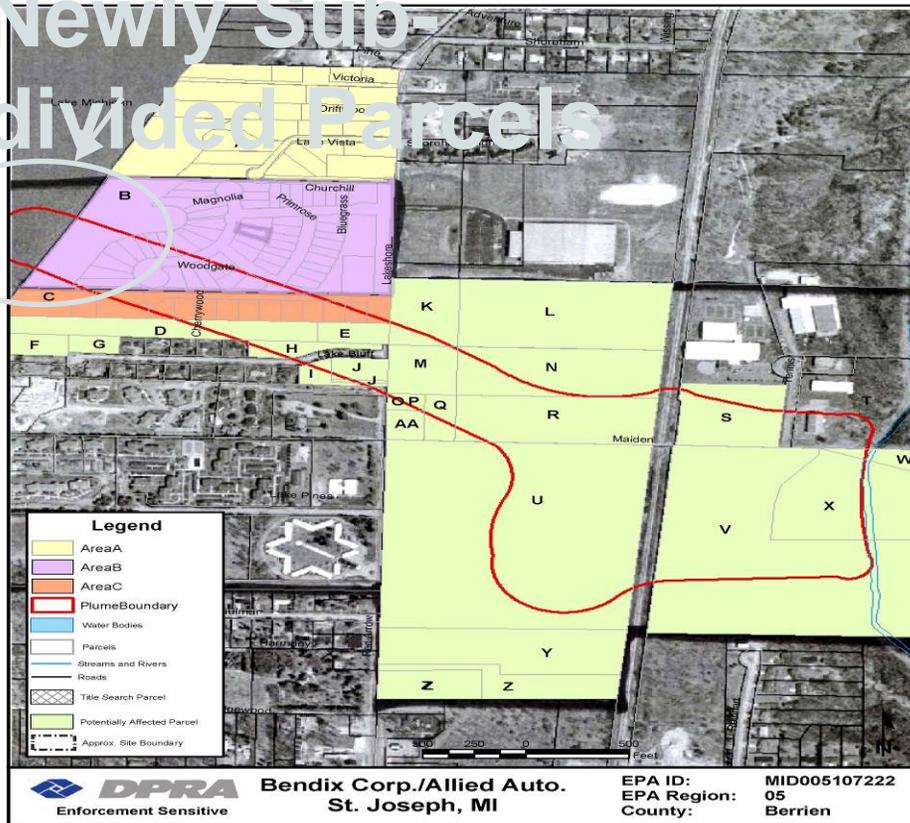
Landfill area





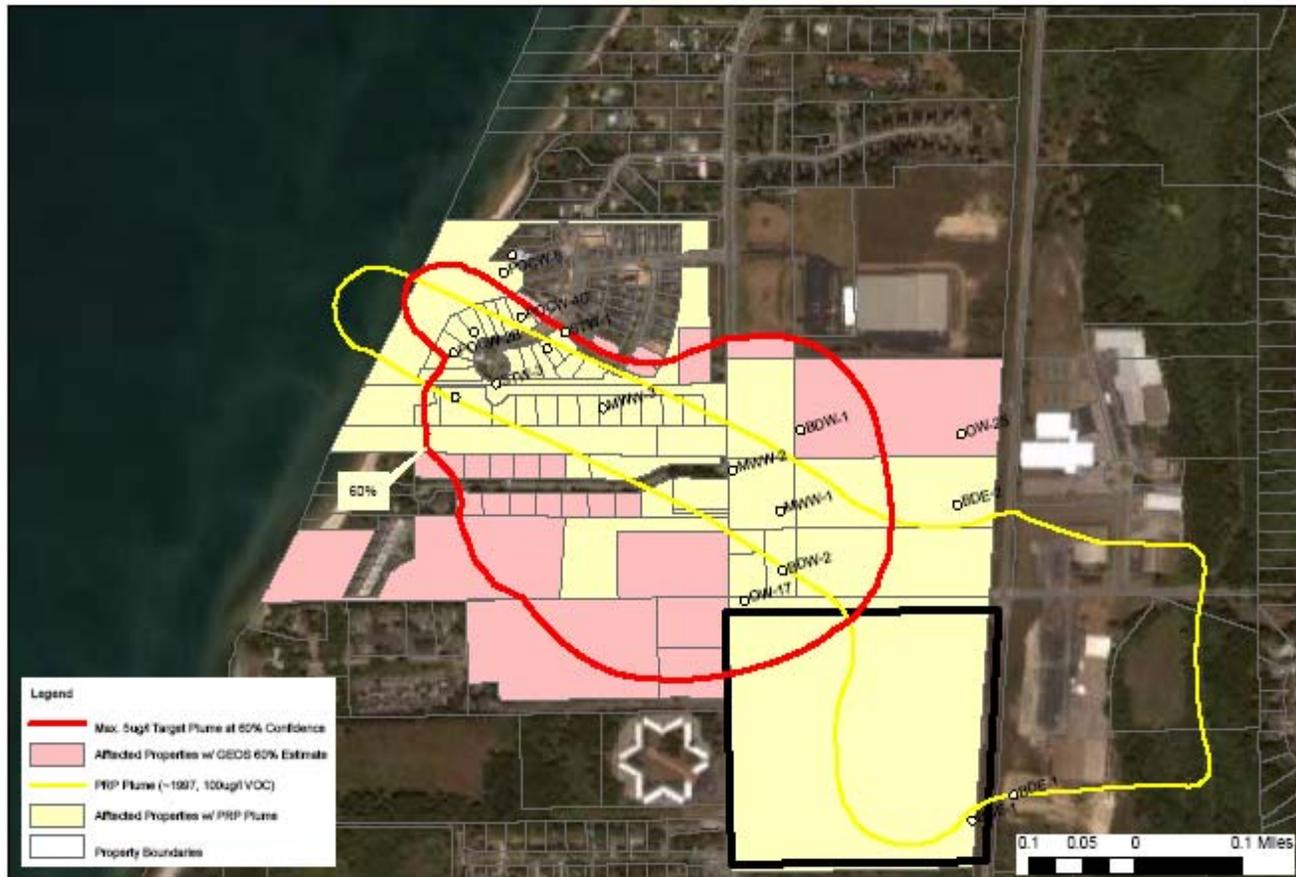
Off-site Groundwater May Contaminate Numerous Parcels

Newly Subdivided Parcels





Bendix Superfund Site - West Plume Differences in Potentially Affected Properties Based on Plume Estimate



Plot Prepared by Andrea Porter, US EPA Region 5, 2005



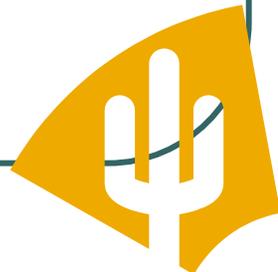
PRP Response to request for IC evaluation

- Positive Response
 - Owner PRPs trying to transfer Sites
 - Smaller Sites
- Negative Response
 - Non Owner PRPs
 - Large Sites with large number of parcels
 - Prior Owner PRPs -- already transferred site



Follow up Actions

- Implement Environmental Covenant using State Statutes (overlay common law)
 - Model Environmental Covenant with Each State
 - Ability to Enforce: PRP, State and EPA
- Subrogation Agreements



“This land is your land, this land
is my land”

